IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2000 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GOPALSING MOTISING RANA

Appearance:

1. Special Civil Application No. 2000 of 2003

MR ASHISH M DAGLI for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.A.M.Dagali on behalf of the petitioner Corporation.

#. In the present petition, the petitioner Corporation

has challenged the award passed by the Labour Court, Vadodara in Reference No.1016 / 1998 dated 12th April, 2002 wherein the labour Court has set aside dismissal order and granted reinstatement with continuity of service and 50 % backwages of the interim period and also imposed punishment of stoppage of one increment without cumulative effect.

#. Learned advocate Mr.Dagali has submitted that in all three charges were levelled against the workman respondent herein. The first charge is, the respondent workman who was on duty as Conductor, who recovered fare from six passengers and not issued the tickets, secondly, from eleven passengers, he has not recovered the fare and not issued the tickets and so far the third charge is concerned, after seeing the checking staff, the workman hurriedly issued tickets and there was some interpolation in the way bill. He also submitted that the labour court has committed gross error in coming to the conclusion that passengers were not examined and that is how, the finding given by the competent authority is baseless. Learned advocate Mr.Dagali has read over and drawn the attention of this Court to page-32 and pointed out that the reasons given by the labour court are incorrect and the same are contrary to the record. He also submitted that the exact distance of checking point from the bus stand where the passengers boarded upto the checking point is more than four and half kilometers but the defence of the respondent workman conduct is, said distance is hardly two to three kilometers only. He also submitted that the entire finding given by the labour court is based upon the documentary evidence which was produced by the Corporation before the labour court. He also submitted that in the statements of the passengers, merely their signature was obtained and statements of the passengers was not written by the passengers. This fact has been taken into account by the labour court. Except submissions referred to above, no other submission or contention raised by the learned advocate Mr.Dagali on behalf of the petitioner Corporation before this Court.

#. I have given thoughtful considerations to the submissions made by the learned advocate Mr.Dagali on behalf of the petitioner Corporation. The reasons given by the labour court are in para-11 [page-30 of petition] of its award, where the labour court has come to the conclusion that at the time when the bus was checked, road booking was continued and it was local bus and the workman was working since 1974 and his past record was clean which has not been disputed by the learned advocate Mr.Dagali before this Court. The labour Court has come

to the conclusion that looking to the record that there was no bad intention on the part of the respondent workman for not issuing the tickets to certain passengers and the explanation which has been given by the respondent conductor has not been taken into account by the departmental authority. The bus was checked in between before reaching destination. The only presumption was drawn to the competent authority that if the bus was not checked, then naturally, the workman would have recovered the fare and not issued the tickets and therefore, the labour court has come to the conclusion that only charge of negligence can be considered to be proved but in respect of the dishonesty and misappropriation, the charge is not proved against the respondent workman. It is also concluded that there was no sufficient evidence led in the departmental inquiry to prove the charge against the respondent workman about dishonesty and misappropriation and there is no such evidence produced before the labour court. Therefore, the labour court has rightly appreciated the important fact that there is no need to examine the passengers as per the decision of the Apex Court but it required to be considered in light of the circumstances and time when statement of passenger is found lacking of address and proper name and other details. Therefore, the labour court has come to the conclusion that in statements of passengers which were obtained by the checking staff, when no detail has been there except signatures of the passengers, then, in such circumstances, it is necessary to examine the concerned passengers in the departmental inquiry to prove the facts which are mentioned in the statements. Therefore, the labour court has also considered that though the bus was late but timing was not intentionally shown in the chargesheet. Even it was not shown in the chargesheet who were the passengers, from where they boarded, where they were going and for the purpose. Therefore, the labour court has come to the conclusion that when some passengers remained without being issued tickets during the course of road booking and the bus was checked in a short distance, it cannot be believed that the bus was checked after a distances of four and half kilometer and therefore, cannot be presumed against the workman that he had not issued the tickets through fare was recovered with intention to misappropriate the amount of the petitioner Corporation. It is also observed by the labour court that some real and hard facts in favour of the workman, cannot be ignored by the department during the course of departmental inquiry. The Labour Court also appreciated that the other important facts and situation under which the workman conductor was working,

for that, the labour court has observed that the bus was running late and there was heavy rush and the stands come across at the interval of short distance and therefore, on account of such negligence on the part of the workman conductor respondent herein, it cannot be presumed against the workman that the intention was to misappropriate the amount and therefore, the labour court concluded in favour of the workman that there was no any dishonest intention on the part of the workman. Thus, the finding recorded by the labour court, is based upon the documentary evidence produced by the petitioner Corporation and therefore, in my opinion, the labour court has rightly exercised the powers under Section 11-A of the I.D.Act. The labour Court has, considering the overall aspects of the matter denied 50 % backwages of the interim period by way of penalty, for which, the labour court has rightly exercised the jurisdiction as per the view taken by the Apex Court in case of JITENDRA SINGH RATHOR V. SHRIBAIDYANATH AYURVED BHAWAN LTD. AND ANOTHER reported in 1984 SC 976. Similarly, the labour court has imposed punishment of stoppage of one increment without cumulative effect taking into consideration the negligence on the part of the workman. Therefore, considering the totality of the facts and circumstances of the case on hands, according to my opinion, the labour Court has rightly appreciated the documentary and oral evidence which was led in the departmental inquiry. This Court cannot reappreciate the same and very evidence while exercising the powers under Articles 226 and 227 of the Constitution and therefore, in my view, the labour court has not committed any error while passing such award and as such, there is no procedural irregularity committed by the labour court while passing the award impugned in this petition. According to my opinion, the labour court has rightly passed the award in question after appreciation of the evidence which was led in the departmental inquiry and this Court, while exercising the writ jurisdiction, can not reappreciate the same evidence. The labour court has given cogent reason in support of its conclusion and there is no infirmity apparent on the face of the record pointed out by the learned advocate Mr.Dagali. As such, there is no procedural irregularity committed by the labour court. It may also be appreciated that this Court having very limited jurisdiction to interfere with the award passed by the labour court or the tribunal. Even two views are possible, this Court cannot interfere with such finding.

#. Recently, the Apex Court has examined this question in reported decision in the case of ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service page 13.

Relevant paragraphs are as under:

2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag V. Mahendra Nath Ghughu. In Nibaran this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala Vs. Phiroz N.Bhatena this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as

a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers' Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

#. In view of above observations and discussion, according to my opinion, the labour court has not committed any error while passing the award in question. Even otherwise, learned advocate Mr.Dagali has failed to point out any other infirmity apparent on the face of the record and therefore, considering the limited powers of this Court as held by the Apex Court in the decision referred to above, there is no substance in the present petition and the same does not deserve to be entertained.

#. After completion of dictation of this oral judgment, learned advocate Mr.Dagali has contended that it is not correct to observe that the respondent workman having clean past record. In fact, the past record was produced on record by the petitioner before the Labour Court vide Exh.7/11 as transpires from page.21 and considering the past record, the labour court [at page.33 of the petition] has conclusion that in past also, there was charge of misappropriation or dishonesty recorded against the workman concerned even during the service career of 22 years. Therefore, at this stage, this Court is inclined to observe that learned advocate Mr.Dagali has not objected the observations made by the Labour Court to the effect that past record is clean and no incident of dishonesty and misappropriation is recorded against the workman, as per the observation at page.33 of this petition. But at this juncture, learned advocate

Mr.Dagali has produced certain additional facts to the notice of this Court. It may be appreciated that ultimately what is required to be considered, whether the workman is habitual offender for committing incident of dishonesty and misappropriation but considering the award in question, it seems that the labour court has rightly observed that looking to the default cards, in earlier career of 22 years, there was no default or misconduct in respect of the dishonesty and / or misappropriate registered against the workman and therefore also, in my opinion the labour court has rightly exercised the powers under Section 11-A of the I.D.Act, 1947, which in any way, does not call for any interference of this Court and hence, the contention lastly raised, not deserve to be accepted and hence rejected.

#. For the reasons stated above and discussion, present petition is not entertained and the same is rejected at accordingly.

No order as to costs.

Date : 24-4-2003 [H.K.Rathod, J.]

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